

House Engrossed Senate Bill

FILED

MICHELE REAGAN

SECRETARY OF STATE

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CHAPTER 205
SENATE BILL 1214

AN ACT

AMENDING SECTION 9-506, ARIZONA REVISED STATUTES; AMENDING SECTION 9-506, ARIZONA REVISED STATUTES, AS AMENDED BY THIS ACT; AMENDING SECTIONS 9-582 AND 9-584, ARIZONA REVISED STATUTES; RELATING TO PUBLIC UTILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 9-506, Arizona Revised Statutes, is amended to read:

9-506. Authority to issue license; limitations; permits for Wi-Fi radio equipment; definitions

A. For the purpose of authorizing and regulating the construction, operation and maintenance of cable television systems, the licensing authority of a city, including a charter city, or town for an incorporated area, or the licensing authority of the county for unincorporated areas, either individually or jointly by intergovernmental contract, may issue a license to any person to use public streets, roads and alleys and shall impose conditions, restrictions and limitations on the use of public streets, roads and alleys and on the construction, operation and maintenance of cable television systems.

B. Subject to the limitations of this section, a licensing authority may adopt resolutions or ordinances implementing and controlling the license or joint license, issue a license containing other terms and conditions and impose a license fee on gross revenues. In addition to the limitations of this section, the license is subject to the limits established by the communications act of 1934, as amended (47 United States Code sections 151 through 615b) and the federal communications commission.

C. Other than the license fee on gross revenues authorized by this article and transaction privilege taxes as provided in this subsection, a licensing authority may not levy a tax, rent, fee or charge, however denominated, on a cable operator for the use of the public streets, roads or alleys to provide cable service or levy a tax, fee or charge on the privilege of engaging in the business of providing cable service in the area of jurisdiction. Taxes, rents, fees and charges include all:

1. Access channel support except for in-kind services or payments as provided in subsection D of this section.

2. Rental, application, construction, permit, inspection, inconvenience and other fees and charges related to a cable operator's use of the public streets, roads and alleys, including the use authorized by subsection I of this section. This subsection does not prohibit a licensing authority from levying fees and charges ~~for microcell equipment~~ on a cable operator OR ITS AFFILIATES FOR MICROCELL EQUIPMENT pursuant to section 9-584 without an offset for license fees. In addition, the following apply:

(a) Any transaction privilege taxes otherwise authorized by law to be levied on the business of providing cable service or in relation to use of the public streets, roads or alleys to provide cable service may be levied on a cable operator if the taxes are levied only on gross revenues and the rate of the taxes is subject to ~~paragraph 3~~ SUBDIVISION (c) of this ~~subsection~~ PARAGRAPH. This subsection does not authorize the

1 imposition of transaction privilege taxes on interstate telecommunications
2 services.

3 (b) The license fee and any transaction privilege taxes levied on
4 gross revenues constitute a franchise fee within the meaning of 47 United
5 States Code section 542(g)(1).

6 (c) Under no circumstances may the total of the rates of the
7 license fee and of any transaction privilege taxes on gross revenues
8 levied or assessed by a licensing authority for the privilege of providing
9 cable service and related use of the public streets, roads or alleys to
10 provide cable service exceed a rate of five percent, except during the
11 transition period for certain licenses as provided in subsection H of this
12 section.

13 (d) A cable operator shall pass on to subscribers any reduction in
14 the amount of fees, taxes or other charges paid by a cable operator and
15 itemized to subscribers that results from the implementation of the
16 amendment to this section effective on September 21, 2006.

17 D. A licensing authority may not require a cable operator to
18 provide in-kind services, make in-kind payments or pay a fee in addition
19 to the monetary license fee levied or assessed as provided in this section
20 as part of or as a condition of issuing a license to provide cable
21 service, except that:

22 1. A licensing authority may require a cable operator to provide
23 channel capacity to transmit programming over which the cable operator
24 exercises no editorial control except as authorized by 47 United States
25 Code section 531(e). The channel capacity shall be limited to not more
26 than two channels of public, educational or governmental access
27 programming in the basic service tier of the cable television system and
28 not more than two channels of noncommercial governmental programming, at
29 least one of which may be programmed by the federal government, in the
30 digital programming tier of the cable television system. If channel
31 capacity is required, the programming shall be specified in the license
32 and the cable operator may require that the channels regularly display an
33 unobtrusive logo or other suitable identifier of the cable operator as set
34 forth in the license.

35 2. A licensing authority may require a cable operator to incur
36 costs and expenses to provide, maintain and operate facilities and
37 equipment of the cable television system, including facilities and
38 equipment for signal carriage, processing, reformatting and
39 interconnection:

40 (a) To connect the cable television system, as it may be relocated
41 from time to time, to transmit programming to and from existing locations
42 of public, educational or governmental access facilities and to allow
43 monitoring of access programming at the facilities.

1 (b) To transmit public, educational and governmental access
2 channels to subscribers with the same prevailing quality, functionality
3 and identification as other channels.

4 3. A licensing authority may require a cable operator to provide
5 the basic service tier of cable service at no monthly service charge to
6 offices and facilities of the licensing authority.

7 4. The value of any channel capacity provided pursuant to paragraph
8 1 of this subsection, the costs and expenses incurred pursuant to
9 paragraph 2 of this subsection and the value of basic service provided
10 pursuant to paragraph 3 of this subsection may not be offset against the
11 license fee levied or assessed under this section.

12 E. This section does not prohibit a cable operator from agreeing to
13 provide in-kind services or make in-kind payments in the area of
14 jurisdiction that are prohibited by subsection D of this section if the
15 agreement with the licensing authority is not part of, or entered into as
16 a condition of being issued, a new, renewed or amended license to provide
17 cable service. An agreement that requires in-kind cable service or
18 payments shall set forth the total annual fair market value of the in-kind
19 cable service and payments, which shall be less than or equal to and
20 offset against the license fee levied or assessed annually pursuant to
21 this section. The license shall authorize the cable operator to retain
22 license fees and taxes collected from its subscribers in the amount of
23 this offset. In-kind cable services and payments include any channel
24 capacity and all capital costs and charges for or in support of the use of
25 any channel capacity that the cable operator agrees to provide under this
26 subsection.

27 F. Notwithstanding subsection C of this section, a licensing
28 authority may require that a cable operator:

29 1. Bear reasonable costs that are associated with damage caused to
30 public streets, roads and alleys by construction, maintenance and
31 operation of its facilities in the public streets, roads and alleys and
32 that are imposed on a competitively neutral and nondiscriminatory basis in
33 relation to costs borne by telecommunications corporations under section
34 9-582, subsection C.

35 2. Pay fines, fees, charges or damages for breach of the terms and
36 conditions of the license.

37 G. This section does not affect the authority of a licensing
38 authority to manage the public streets, roads and alleys within its
39 boundaries or to exercise its police powers.

40 H. A license that is in effect on September 21, 2006, including one
41 that is later renewed or extended for a term that begins before July 1,
42 2007, is enforceable in accordance with its terms and conditions as of
43 July 1, 2007 and is not subject to the provisions of the amendment to this
44 section effective on September 21, 2006. If a license that is in effect
45 on September 21, 2006 is later extended or renewed for a term that begins

1 after June 30, 2007, the extended or renewed license is subject to the
2 provisions of the amendment to this section effective on September 21,
3 2006 and the amendment to this section, effective on September 19, 2007,
4 effective on the first day of the renewal or extension term, unless the
5 term begins before January 1, 2008, in which case the limitation in
6 subsection C, paragraph ~~5~~ 2, SUBDIVISION (c) of this section on the rates
7 of the license fee and of any transaction privilege taxes on gross
8 revenues is:

9 1. Five percent, if the gross effective rate is five percent or
10 less.

11 2. If the gross effective rate is more than five percent,
12 five percent plus the following percentage:

13 (a) In the first year of the extension or renewal term, the gross
14 effective rate minus five percent, multiplied by two-thirds.

15 (b) In the second year of the term, the gross effective rate minus
16 five percent, multiplied by one-third.

17 (c) In the third year of the term, and thereafter, zero percent.

18 I. On application a licensing authority shall issue to a cable
19 operator OR ITS AFFILIATE a permit to attach allowed Wi-Fi radio equipment
20 to the cable television system in public streets, roads and alleys in the
21 area of jurisdiction. The permits shall allow installation, operation and
22 maintenance of the allowed Wi-Fi radio equipment. A licensing authority
23 may require that all of the allowed Wi-Fi radio equipment at a single
24 location fit within a fifteen-inch cube and be contained entirely within a
25 ground-mounted pedestal otherwise allowed by the license or be connected
26 directly to and mounted at the same height as one of the cable operator's
27 aerial horizontal conductors otherwise allowed by the license.

28 J. Subsection I of this section does not:

29 1. Affect any authority of a political subdivision, including an
30 agricultural improvement district or any other special taxing district,
31 the licensing authority or any other person controlling utility poles in
32 the public streets, roads and alleys to deny, limit, restrict or determine
33 the terms and conditions for the use of or attachment to the utility poles
34 or attachments to other poles of the political subdivision, licensing
35 authority or other person by a cable operator.

36 2. Prohibit a licensing authority from imposing competitively
37 neutral and nondiscriminatory requirements for a cable operator to
38 underground aerial facilities to which allowed Wi-Fi equipment is
39 attached.

40 3. Prohibit the imposition of a tax, rent, fee or charge on revenue
41 from services provided through allowed Wi-Fi radio equipment.

42 4. Affect the authority of a licensing authority to manage the
43 public streets, roads and alley within its boundaries or to exercise its
44 police powers including review and approval of an application before
45 issuing a permit.

1 K. For the purposes of this section:

2 1. "AFFILIATE" MEANS A PERSON THAT DIRECTLY OR INDIRECTLY, THROUGH
3 ONE OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY OR IS UNDER COMMON
4 CONTROL WITH A CABLE OPERATOR.

5 ~~1.~~ 2. "Allowed Wi-Fi radio equipment" means radio equipment that
6 uses only unlicensed radio spectrum and that enables wireless
7 communication with a communications network for unlicensed services such
8 as Wi-Fi service.

9 ~~2.~~ 3. "Gross effective rate" means one hundred percent multiplied
10 by the fraction in which the numerator is the sum of all taxes, fees and
11 charges of the licensing authority that the cable operator itemized to
12 subscribers and paid to the licensing authority under the license for the
13 twelve calendar months immediately preceding September 21, 2006 and the
14 denominator is the cable operator's gross revenues for that period in the
15 area of jurisdiction.

16 Sec. 2. Section 9-506, Arizona Revised Statutes, as amended by
17 section 1 of this act, is amended to read:

18 9-506. Authority to issue license; limitations; permits for
19 Wi-Fi radio equipment; definitions

20 A. For the purpose of authorizing and regulating the construction,
21 operation and maintenance of cable television systems, the licensing
22 authority of a city, including a charter city, or town for an incorporated
23 area, or the licensing authority of the county for unincorporated areas,
24 either individually or jointly by intergovernmental contract, may issue a
25 license to any person to use public streets, roads and alleys and shall
26 impose conditions, restrictions and limitations on the use of public
27 streets, roads and alleys and on the construction, operation and
28 maintenance of cable television systems.

29 B. Subject to the limitations of this section, a licensing
30 authority may adopt resolutions or ordinances implementing and controlling
31 the license or joint license, issue a license containing other terms and
32 conditions and impose a license fee on gross revenues. In addition to the
33 limitations of this section, the license is subject to the limits
34 established by the communications act of 1934, as amended (47 United
35 States Code sections 151 through 615b) and the federal communications
36 commission.

37 C. Other than the license fee on gross revenues authorized by this
38 article and transaction privilege taxes as provided in this subsection, a
39 licensing authority may not levy a tax, rent, fee or charge, however
40 denominated, on a cable operator for the use of the public streets, roads
41 or alleys to provide cable service or levy a tax, fee or charge on the
42 privilege of engaging in the business of providing cable service in the
43 area of jurisdiction. Taxes, rents, fees and charges include all:

44 1. Access channel support except for in-kind services or payments
45 as provided in subsection D of this section.

2. Rental, application, construction, permit, inspection, inconvenience and other fees and charges related to a cable operator's use of the public streets, roads and alleys, including the use authorized by subsection I of this section. This subsection does not prohibit a licensing authority from levying fees and charges on a cable operator or its affiliates for microcell equipment pursuant to section 9-584 OR FOR SMALL WIRELESS FACILITIES PURSUANT TO ARTICLE 8 OF THIS CHAPTER OR TITLE 11, CHAPTER 13, ARTICLE 1 without an offset for license fees. In addition, the following apply:

(a) Any transaction privilege taxes otherwise authorized by law to be levied on the business of providing cable service or in relation to use of the public streets, roads or alleys to provide cable service may be levied on a cable operator if the taxes are levied only on gross revenues and the rate of the taxes is subject to subdivision (c) of this paragraph. This subsection does not authorize the imposition of transaction privilege taxes on interstate telecommunications services.

(b) The license fee and any transaction privilege taxes levied on gross revenues constitute a franchise fee within the meaning of 47 United States Code section 542(g)(1).

(c) Under no circumstances may the total of the rates of the license fee and of any transaction privilege taxes on gross revenues levied or assessed by a licensing authority for the privilege of providing cable service and related use of the public streets, roads or alleys to provide cable service exceed a rate of five percent, except during the transition period for certain licenses as provided in subsection H of this section.

(d) A cable operator shall pass on to subscribers any reduction in the amount of fees, taxes or other charges paid by a cable operator and itemized to subscribers that results from the implementation of the amendment to this section effective on September 21, 2006.

D. A licensing authority may not require a cable operator to provide in-kind services, make in-kind payments or pay a fee in addition to the monetary license fee levied or assessed as provided in this section as part of or as a condition of issuing a license to provide cable service, except that:

1. A licensing authority may require a cable operator to provide channel capacity to transmit programming over which the cable operator exercises no editorial control except as authorized by 47 United States Code section 531(e). The channel capacity shall be limited to not more than two channels of public, educational or governmental access programming in the basic service tier of the cable television system and not more than two channels of noncommercial governmental programming, at least one of which may be programmed by the federal government, in the digital programming tier of the cable television system. If channel capacity is required, the programming shall be specified in the license

1 and the cable operator may require that the channels regularly display an
2 unobtrusive logo or other suitable identifier of the cable operator as set
3 forth in the license.

4 2. A licensing authority may require a cable operator to incur
5 costs and expenses to provide, maintain and operate facilities and
6 equipment of the cable television system, including facilities and
7 equipment for signal carriage, processing, reformatting and
8 interconnection:

9 (a) To connect the cable television system, as it may be relocated
10 from time to time, to transmit programming to and from existing locations
11 of public, educational or governmental access facilities and to allow
12 monitoring of access programming at the facilities.

13 (b) To transmit public, educational and governmental access
14 channels to subscribers with the same prevailing quality, functionality
15 and identification as other channels.

16 3. A licensing authority may require a cable operator to provide
17 the basic service tier of cable service at no monthly service charge to
18 offices and facilities of the licensing authority.

19 4. The value of any channel capacity provided pursuant to paragraph
20 1 of this subsection, the costs and expenses incurred pursuant to
21 paragraph 2 of this subsection and the value of basic service provided
22 pursuant to paragraph 3 of this subsection may not be offset against the
23 license fee levied or assessed under this section.

24 E. This section does not prohibit a cable operator from agreeing to
25 provide in-kind services or make in-kind payments in the area of
26 jurisdiction that are prohibited by subsection D of this section if the
27 agreement with the licensing authority is not part of, or entered into as
28 a condition of being issued, a new, renewed or amended license to provide
29 cable service. An agreement that requires in-kind cable service or
30 payments shall set forth the total annual fair market value of the in-kind
31 cable service and payments, which shall be less than or equal to and
32 offset against the license fee levied or assessed annually pursuant to
33 this section. The license shall authorize the cable operator to retain
34 license fees and taxes collected from its subscribers in the amount of
35 this offset. In-kind cable services and payments include any channel
36 capacity and all capital costs and charges for or in support of the use of
37 any channel capacity that the cable operator agrees to provide under this
38 subsection.

39 F. Notwithstanding subsection C of this section, a licensing
40 authority may require that a cable operator:

41 1. Bear reasonable costs that are associated with damage caused to
42 public streets, roads and alleys by construction, maintenance and
43 operation of its facilities in the public streets, roads and alleys and
44 that are imposed on a competitively neutral and nondiscriminatory basis in

1 relation to costs borne by telecommunications corporations under section
2 9-582, subsection C.

3 2. Pay fines, fees, charges or damages for breach of the terms and
4 conditions of the license.

5 G. This section does not affect the authority of a licensing
6 authority to manage the public streets, roads and alleys within its
7 boundaries or to exercise its police powers.

8 H. A license that is in effect on September 21, 2006, including one
9 that is later renewed or extended for a term that begins before July 1,
10 2007, is enforceable in accordance with its terms and conditions as of
11 July 1, 2007 and is not subject to the provisions of the amendment to this
12 section effective on September 21, 2006. If a license that is in effect
13 on September 21, 2006 is later extended or renewed for a term that begins
14 after June 30, 2007, the extended or renewed license is subject to the
15 provisions of the amendment to this section effective on September 21,
16 2006 and the amendment to this section effective on September 19, 2007,
17 effective on the first day of the renewal or extension term, unless the
18 term begins before January 1, 2008, in which case the limitation in
19 subsection C, paragraph 2, subdivision (c) of this section on the rates of
20 the license fee and of any transaction privilege taxes on gross revenues
21 is:

22 1. Five percent, if the gross effective rate is five percent or
23 less.

24 2. If the gross effective rate is more than five percent,
25 five percent plus the following percentage:

26 (a) In the first year of the extension or renewal term, the gross
27 effective rate minus five percent, multiplied by two-thirds.

28 (b) In the second year of the term, the gross effective rate minus
29 five percent, multiplied by one-third.

30 (c) In the third year of the term, and thereafter, zero percent.

31 I. On application a licensing authority shall issue to a cable
32 operator or its affiliate a permit to attach allowed Wi-Fi radio equipment
33 to the cable television system in public streets, roads and alleys in the
34 area of jurisdiction. The permits shall allow installation, operation and
35 maintenance of the allowed Wi-Fi radio equipment. A licensing authority
36 may require that all of the allowed Wi-Fi radio equipment at a single
37 location fit within a fifteen-inch cube and be contained entirely within a
38 ground-mounted pedestal otherwise allowed by the license or be connected
39 directly to and mounted at the same height as one of the cable operator's
40 aerial horizontal conductors otherwise allowed by the license.

41 J. Subsection I of this section does not:

42 1. Affect any authority of a political subdivision, including an
43 agricultural improvement district or any other special taxing district,
44 the licensing authority or any other person controlling utility poles in
45 the public streets, roads and alleys to deny, limit, restrict or determine

1 the terms and conditions for the use of or attachment to the utility poles
2 or attachments to other poles of the political subdivision, licensing
3 authority or other person by a cable operator.

4 2. Prohibit a licensing authority from imposing competitively
5 neutral and nondiscriminatory requirements for a cable operator to
6 underground aerial facilities to which allowed Wi-Fi equipment is
7 attached.

8 3. Prohibit the imposition of a tax, rent, fee or charge on revenue
9 from services provided through allowed Wi-Fi radio equipment.

10 4. Affect the authority of a licensing authority to manage the
11 public streets, roads and alley within its boundaries or to exercise its
12 police powers including review and approval of an application before
13 issuing a permit.

14 K. For the purposes of this section:

15 1. "Affiliate" means a person that directly or indirectly, through
16 one or more intermediaries, controls, is controlled by or is under common
17 control with a cable operator.

18 2. "Allowed Wi-Fi radio equipment" means radio equipment that uses
19 only unlicensed radio spectrum and that enables wireless communication
20 with a communications network for unlicensed services such as Wi-Fi
21 service.

22 3. "Gross effective rate" means one hundred percent multiplied by
23 the fraction in which the numerator is the sum of all taxes, fees and
24 charges of the licensing authority that the cable operator itemized to
25 subscribers and paid to the licensing authority under the license for the
26 twelve calendar months immediately preceding September 21, 2006 and the
27 denominator is the cable operator's gross revenues for that period in the
28 area of jurisdiction.

29 Sec. 3. Section 9-582, Arizona Revised Statutes, is amended to
30 read:

31 9-582. Taxes and other charges; telecommunications
32 facilities; limitations

33 A. A political subdivision shall not levy a tax, rent, fee or
34 charge on a telecommunications corporation, including a telecommunications
35 corporation that provides interstate services as described in section
36 9-583, subsection C, for the use of a public highway to provide
37 telecommunications services, or levy a tax, fee or charge ~~upon~~ ON the
38 privilege of engaging in the business of providing telecommunications
39 services within that political subdivision other than:

40 1. Any transaction privilege tax authorized by law on the business
41 of providing telecommunications services, except that this section does
42 not allow the imposition of a transaction privilege tax on the business of
43 providing interstate telecommunications services. Any transaction
44 privilege tax authorized by law on the business of providing commercial

1 mobile radio service shall not exceed the tax rate levied on the business
2 of providing telecommunications services.

3 2. A telecommunications application fee for the issuance of a
4 telecommunications license or franchise if the application fee applies on
5 a competitively neutral and nondiscriminatory basis to all
6 telecommunications corporations that use the public highways to provide
7 telecommunications services. A political subdivision may require only one
8 application fee and one license or franchise for each telecommunications
9 corporation whether the telecommunications corporation provides local
10 services only or local and long-distance services, including intrastate or
11 interstate services. An application fee is not required for a
12 telecommunications corporation described in subsection E of this section.

13 3. A telecommunications construction permit fee for the issuance of
14 a construction permit to place telecommunications facilities in the public
15 highways if the permit fee applies on a competitively neutral and
16 nondiscriminatory basis to all telecommunications corporations that place
17 telecommunications facilities in the political subdivision's public
18 highways to provide telecommunications services. Political subdivisions
19 shall establish a nonbinding outside arbitration procedure to attempt to
20 resolve disputes over recovery of reasonable, proportionate and
21 attributable costs of construction permit fees pursuant to this paragraph
22 and other fees pursuant to this article before the disputes are submitted
23 to a court for resolution.

24 4. A fee under section 9-583, subsection C.

25 B. All application fees, permit fees and charges levied by a
26 political subdivision on telecommunications corporations pursuant to
27 subsection A, paragraphs 2 and 3 of this section shall be levied on a
28 competitively neutral and nondiscriminatory basis and directly related to
29 the costs incurred by the political subdivision in providing services
30 relating to the granting or administration of applications or permits.
31 These fees and charges also shall be reasonably related in time to the
32 occurrence of the costs.

33 C. Notwithstanding subsections A and B of this section, a political
34 subdivision may require a telecommunications corporation to bear all of
35 the reasonable costs associated with construction, maintenance and
36 operation of its facilities in the public highway used to provide
37 telecommunications services, including bearing reasonable costs associated
38 with damage caused to public highways.

39 D. Notwithstanding subsections A and B of this section, in a
40 license or franchise, a political subdivision and a telecommunications
41 corporation may agree to in-kind payments for use of the public highways
42 different from those specified in subsection A or B of this section. The
43 license or franchise shall be structured so that the in-kind payments made
44 for use of the public highways to provide interstate telecommunications
45 services under the license or franchise are less than or equal to and are

1 offset against any linear foot charge owed pursuant to section 9-583,
2 subsection C, paragraphs 2 and 3. The license or franchise shall be
3 structured so that the in-kind payments made under the license or
4 franchise pursuant to subsection A, paragraph 1 of this section are less
5 than or equal to and are offset against any transaction privilege license
6 tax on the business of providing telecommunications services. The
7 valuation of any in-kind benefits shall be set forth in such agreements.
8 The in-kind facilities that are used to offset any or all payments in this
9 subsection are limited to the costs of the in-kind facilities and shall
10 remain in possession and ownership of the political subdivision after the
11 term of the existing license or franchise expires. In-kind facilities may
12 be offset for either payments of intrastate transaction privilege taxes or
13 for interstate linear foot charges but shall not be offset for any
14 combination of intrastate and interstate charges. However, a political
15 subdivision shall not require a telecommunications corporation to provide
16 in-kind services, make in-kind payments or pay a fee in addition to the
17 fees described in subsections A, ~~through~~ B AND C of this section as a
18 condition of consent to use a highway to provide telecommunications
19 services.

20 E. Notwithstanding subsection D of this section, any
21 telecommunications corporation that was providing telecommunications
22 service within this state on November 1, 1997 pursuant to a grant made to
23 it or its lawful predecessors ~~prior to~~ BEFORE the effective date of the
24 Arizona Constitution may continue to provide telecommunications service
25 pursuant to that state grant until it is lawfully repealed, revoked or
26 amended. Such telecommunications corporation shall require no additional
27 grant from any political subdivision to provide telecommunications
28 services.

29 F. ~~Nothing in~~ This article ~~shall be deemed to~~ DOES NOT affect the
30 terms or conditions of any franchise, license or permit issued by a
31 political subdivision ~~prior to~~ BEFORE November 1, 1997, or to release any
32 party from its obligations thereunder. Those franchises, licenses or
33 permits shall remain fully enforceable in accordance with their terms. A
34 political subdivision may lawfully enter into agreements with franchise
35 holders, licensees or permittees to modify or terminate an existing
36 franchise, license or agreement.

37 G. A political subdivision may not discriminate against a cable
38 operator in its ~~provision of~~ USE OF ITS CABLE SYSTEM OR PREVENT A CABLE
39 OPERATOR FROM USING ITS CABLE SYSTEM IN THE PUBLIC HIGHWAYS TO PROVIDE
40 telecommunications services AND OTHER NONCABLE SERVICES if ~~that~~ THE cable
41 operator complies with APPLICABLE FEDERAL AND STATE requirements
42 ~~applicable to telecommunications corporations. Nothing in~~ This subsection
43 ~~limits~~ DOES NOT DO EITHER OF THE FOLLOWING:

44 1. LIMIT the authority of any political subdivision to license
45 cable systems and to establish conditions on those licenses THAT ARE

1 COMPETITIVELY NEUTRAL AND NONDISCRIMINATORY WITH CONDITIONS APPLICABLE TO
2 TELECOMMUNICATIONS CORPORATIONS AND THAT ARE consistent with federal AND
3 STATE law.

4 2. AFFECT THE AUTHORITY OF A POLITICAL SUBDIVISION TO MANAGE THE
5 PUBLIC HIGHWAYS WITHIN ITS BOUNDARIES OR EXERCISE ITS POLICE POWERS AND
6 LAND USE POWERS.

7 Sec. 4. Section 9-584, Arizona Revised Statutes, is amended to
8 read:

9 9-584. Microcell equipment in public highways; permits; fees;
10 limitations; definitions

11 A. A political subdivision shall allow the following persons AND
12 THEIR AFFILIATES to install, operate and maintain microcell equipment in
13 the public highways ~~within~~ THAT ARE UNDER THE JURISDICTION OF the
14 political subdivision:

15 1. A telecommunications corporation within the licensed area of a
16 license issued by the political subdivision under this article.

17 2. A telecommunications corporation described in section 9-582,
18 subsection E.

19 3. A cable operator in the area of jurisdiction licensed by the
20 political subdivision under section 9-506.

21 B. On application a political subdivision shall issue permits for
22 the installation, operation and maintenance of microcell equipment in the
23 public highways within the political subdivision on a competitively
24 neutral and nondiscriminatory basis to all persons specified in subsection
25 A of this section. ONLY A QUALIFIED SERVICE PROVIDER MAY USE MICROCELL
26 EQUIPMENT TO PROVIDE COMMERCIAL MOBILE RADIO SERVICE.

27 C. All application fees, permit fees and charges levied by a
28 political subdivision for applications or permits shall be levied on a
29 competitively neutral and nondiscriminatory basis and directly related to
30 the costs incurred by the political subdivision in providing services
31 relating to the granting or administration of applications or permits.
32 These fees and charges also shall be reasonably related in time to the
33 occurrence of the costs.

34 D. A political subdivision may not charge a recurring fee, rent or
35 other charge for use of aerial strand-mounted microcell equipment in
36 public highways within the political subdivision if the political
37 subdivision levies a rent, fee or charge on a person identified in
38 subsection A of this section for the use of the public highways to provide
39 a service. This subsection does not prohibit a political subdivision from
40 charging a competitively neutral and nondiscriminatory rent, fee or charge
41 for the use of utility poles or other poles of the political subdivision.
42 ~~Only a qualified service provider may use microcell equipment to provide~~
43 ~~commercial mobile services.~~

1 E. Except as the political subdivision agrees in the political
2 subdivision's sole discretion, at each site microcell equipment is limited
3 to:

4 1. Not more than two strand-mounted ~~antennae~~ ANTENNAS and radio
5 pairs that are owned by a person specified in subsection A of this section
6 or a qualified service provider and that are used to provide commercial
7 mobile RADIO service.

8 2. Related devices that are owned by a person specified in
9 subsection A of this section and that are mounted on strand between
10 utility poles, including power supplies, housings, cables and similar
11 supporting furnishings and improvements.

12 F. This section does not:

13 1. Affect any authority of a political subdivision, an agricultural
14 improvement district or any other special taxing district, or any other
15 person controlling utility poles in the public highways to deny, limit,
16 restrict or determine the terms and conditions for use of or attachment to
17 the utility poles or attachments to other poles of the political
18 subdivision, district or other person by a person specified in subsection
19 A of this section.

20 2. Prohibit a political subdivision from imposing competitively
21 neutral and nondiscriminatory requirements for a person identified in
22 subsection A of this section to underground aerial facilities to which
23 microcell equipment is attached.

24 3. Prohibit a political subdivision from imposing a tax, rent, fee
25 or charge on revenue from services provided through microcell equipment.

26 4. Affect ~~the~~ ANY authority of a political subdivision to manage
27 the public highways within the political subdivision's boundaries or to
28 exercise the political subdivision's police powers AND LAND USE POWERS,
29 including review and approval of an application before issuing a permit.

30 5. AFFECT THE APPLICATION OF FEDERAL LAW ON PROCESSING
31 APPLICATIONS, ISSUING PERMITS AND LEVYING CHARGES FOR THE CONSTRUCTION,
32 MANAGEMENT, INSTALLATION, OPERATION, MAINTENANCE AND CONTROL OF MICROCELL
33 EQUIPMENT IN THE PUBLIC HIGHWAYS.

34 G. For the purposes of this section:

35 1. "AFFILIATE" MEANS A PERSON THAT DIRECTLY OR INDIRECTLY, THROUGH
36 ONE OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY OR IS UNDER COMMON
37 CONTROL WITH A PERSON SPECIFIED IN SUBSECTION A OF THIS SECTION.

38 ~~1.~~ 2. "Microcell equipment" means devices that are connected to
39 the aerial facilities of a person specified in subsection A of this
40 section and that are used solely for transmitting, processing and
41 receiving voice and data wireless telecommunications services. Microcell
42 equipment does not include any ground-based equipment.

43 ~~2.~~ 3. Political subdivision does not include an agricultural
44 improvement district or other special taxing district that controls
45 utility poles or an irrigation district.

1 ~~3.~~ 4. "Qualified service provider" means a person that has all
2 applicable authorizations required to provide commercial mobile RADIO
3 service using microcell equipment.

4 ~~4.~~ 5. "Utility pole" means a pole or similar structure and
5 attached appurtenances including strand that is designed for
6 telecommunications, cable, data or electric functions.

7 Sec. 5. Legislative findings

8 Wireless communications services bring important daily benefits to
9 the residents of this state, including sending and receiving
10 constitutionally protected speech and other communications. Varying
11 conditions and restrictions on access to the public highways, streets,
12 roads and alleys across multiple political subdivisions of this state can
13 impede the use of these services by, and their delivery to, the residents
14 of this state. Therefore, the legislature finds, determines and declares
15 that this act is necessary as a matter of statewide concern to ensure that
16 cities, towns and counties, including charter cities, compatibly and
17 effectively authorize, administer and manage the use of public highways,
18 streets, roads and alleys for the provision of certain licensed and
19 unlicensed wireless communications services. It is the public policy of
20 this state that this act be enforced to the fullest extent permitted by
21 federal law.

22 Sec. 6. Applicability

23 A. Section 9-506, subsection I, Arizona Revised Statutes, as
24 amended by section 1 of this act, allowing an affiliate of a licensed
25 cable operator to attach to the cable television system and operate and
26 maintain allowed Wi-Fi radio equipment in public streets, roads and
27 alleys, applies to all cable operator licenses issued before the effective
28 date of this act.

29 B. Sections 9-582 and 9-584, Arizona Revised Statutes, as amended
30 by this act, allowing certain persons to install, operate and maintain
31 microcell equipment in the public highways within a political subdivision,
32 apply to all persons specified in this act and their affiliates, including
33 those with telecommunications corporation or cable operator licenses or
34 other authorizations that took effect or were issued before the effective
35 date of this act.

36 Sec. 7. Conditional enactment

37 Section 9-506, Arizona Revised Statutes, as amended by section 2 of
38 this act, does not become effective unless House Bill 2365, fifty-third
39 legislature, first regular session, relating to wireless services, becomes
40 law.

APPROVED BY THE GOVERNOR APRIL 26, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2017.

Passed the House April 17, 20 17,

Passed the Senate February 21, 20 17,

by the following vote: 57 Ayes,

by the following vote: 30 Ayes,

1 Nays, 1 Not Voting
1 Vacant

9 Nays, 0 Not Voting

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

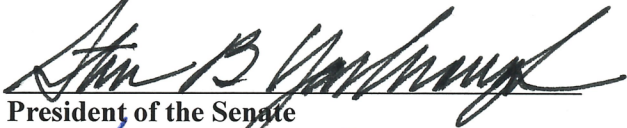
S.B. 1214


SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 20, 2017

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting


President of the Senate

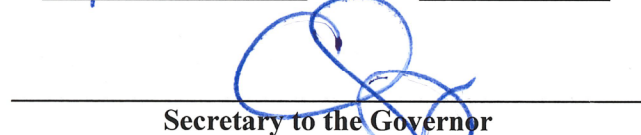

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

20th day of April, 2017

at 12:14 o'clock P. M.


Secretary to the Governor

Approved this 26th day of

April 2017

at 1:27 o'clock P. M.


Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 26 day of April, 2017

at 4:44 o'clock P. M.


Secretary of State